

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARGARITO FLORES,

Defendant.

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Case No. 3:97cr074(1)  
3:06cv013

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JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #234) IN THEIR  
ENTIRETY, AND OVERRULING DEFENDANT-PETITIONER'S OBJECTIONS  
THEREO (DOC. #269); DEFENDANT-PETITIONER'S MOTION TO  
VACATE, SET ASIDE OR CORRECT SENTENCE, PURSUANT TO 28  
U.S.C. § 2255 (DOC. #233) DISMISSED, AS BARRED BY THE  
APPLICABLE STATUTE OF LIMITATIONS; CERTIFICATE OF  
APPEALABILITY AND ANTICIPATED REQUEST FOR LEAVE TO APPEAL  
*IN FORMA PAUPERIS* DENIED; TERMINATION ENTRY

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Pursuant to the reasoning and citations of authority set forth by the United States Magistrate Judge, in her Report and Recommendations filed January 20, 2006 (Doc. #234), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court adopts said Report and Recommendations in their entirety, and overrules the Defendant-Petitioner's Objections thereto (Doc. #269). Judgment will be ordered entered in favor of the Plaintiff-Respondent and against Defendant-Petitioner, dismissing Defendant-Petitioner's Motion to

Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C. § 2255

(Doc. #233), in its entirety, as barred by the applicable statute of limitations. In so ruling, this Court rejects the argument of the Defendant-Petitioner that the statute of limitations was extended as a result of the decision of the United States Supreme Court in *United States v. Booker*, 543 U.S. 220 (2005), given that the Sixth Circuit has held that *Booker* is not applicable on collateral review. *Humphress v. United States*, 398 F.3d 855 (6<sup>th</sup> Cir. 2005), *cert. denied*, 546 U.S. 855 (2005).

Given that the Court's decision herein would not be debatable among jurists of reason, this Court denies a Certificate of Appealability and, given that any appeal from this decision would be objectively frivolous, this Court denies any anticipated request for leave to appeal *in forma pauperis*.

/s/ Walter Herbert Rice

February 1, 2008

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

Margarito Flores, Pro Se

Vipal Patel, Esq.

Magistrate Judge Sharon L. Ovington